Supreme Court, U.S.
FILED
AUG 28 1995
OFFICE OF THE CLERK

No. 95-333

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1994

Archie Ward Julien,
Petitioner,

vs.

The State of Texas,
The Hon. J.D. Langley,
Atty. W. Stephen Rodgers,
Caperton, Rodgers, Miller & Holt, P.C.,
Respondents.

Petition for Writ of Certiorari to The
United States Court of Appeals
for The Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

Archie W. Julien, Pro Se
10530 Newborough Drive
Houston, TX 77099-1889

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53 pp

QUESTION PRESENTED FOR REVIEW

Is federal jurisdiction precluded - in an original action in a United States district court - to seek relief for damages which occurred as a result of a State court's acting with a clear absence of all jurisdiction?

LIST OF ALL PARTIES

All parties appear in the caption of the case.

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REPORTS OF OPINIONS DELIVERED IN THE CASE

There are no reports of opinions.

JURISDICTION OF THIS COURT

(i) May 3, 1995 - United States Court of Appeals for The Fifth Circuit denied appeal.

(ii) June 8, 1995 - United States Court of Appeals for The Fifth Circuit denied rehearing.

(iii) No cross-petition has been filed.

(vi) 28 U.S.C. § 1254(1) confers jurisdiction.

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STATEMENT OF THE CASE

In Judge J.D. LANGLEY's 85th Texas District Court, I was a plaintiff suing a Mr. Bolton for breach of Warranty of Title, after unsuccessful appeals of an adverse possession judgment. Mr. Bolton was represented by Atty. W. STEPHEN RODGERS. Judge LANGLEY held trial and rendered a judgment that denied me all relief and granted attorney's fees to Mr. Bolton.

I wanted to appeal, but I didn't have enough money left. So on September 11, 1992, I filed an Affidavit of Inability to Pay Appeal Costs under Rule 40(a)(3) of the Texas Rules of Appellate Procedure.

On September 15, 1992, Mr. Bolton, through Atty. RODGERS, filed an unsworn,[1] general denial [2] "contest" [3] (R.O.A. 000184, 000183) of my Affidavit. But since the "contest" actually did require a sworn oath, I pointed this out at the contest hearing October 5, 1992. Judge LANGLEY agreed the contest should have been sworn, but then allowed Atty. RODGERS to add his own

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[1] Vernon's Texas Annotated Statutes, article 23(18); ***Shelton v Berry***, 19 Tex 154; ***Rives v. State***, 107 Crim 370, 296 SW 576

[2] Rule 92 of the Texas Rules of Civil Procedure

[3] Rule 40 of the Texas Rules of Appellate Procedure

handwritten affidavit to the end of Bolton's "contest." Judge LANGLEY then granted the "contest." I unsuccessfully tried for mandamus.

Because Mr. Bolton's unsworn, general denial "contest" is central to the complete lack of Judge LANGLEY's jurisdiction to grant the "contest," it is inserted in reduced form between pages 4 and 5.

Judge LANGLEY and Atty. RODGERS then had the county sheriff seize and auction my business property to pay for Mr. Bolton's costs as granted in the judgment.

For the almost three years since the contest hearing, I have contended that Judge LANGLEY's decision granting the "contest" was void because he no longer had jurisdiction by the time of the hearing:

- A missing sworn oath, if required by a pleading, may only be added to the pleading up until, but not after, limitations expire, ***Smith v. Hayes***, 597 S.W.2d 488;
- A pleading is a nullity if it lacks a sworn oath required by construing a statute ***Johnson v Mooney*** (1922 CA) 241 SW 308; ***Todd v State*** (1911) 63 CA 647, 134 SW 761, writ ref; ***Hill v State*** (1916 CA) 190 SW 255;
- The Texas Supreme Court has construed Rule 40 such that the term "contest" means sworn contest, and an unsworn "contest" cannot actually contest an

Affidavit, ***Currie v. Missouri***, 101 Tex. 482, 108 S.W. 1167; also see ***Texas v. Cox***, 49 S.W.2d 725, 726; ***Slay v. Burnett***, 187 S.W.2d 377, 382;

- Rule 40 requires the Affidavit to be contested within ten days of the Affidavit's being filed,
- If the Affidavit is not contested by the 10th day after filing the Affidavit, the appeal is perfected, ***Coleman v. Long***, 407 S.W.2d 279;
- The State appellate court acquires exclusive, plenary jurisdiction of the entire case when an appeal is perfected, subject to the right of the trial court to grant a new trial, ***Ammex v. Archer***, (1964 SCt) 381 S.W.2d 478; ***Bergman v. West***, (1953 CA) 262 S.W.2d 435; ***Cude v. Sanderson***, (1951 CA) 235 S.W.2d 927, no wr. hist.; and
- Judge LANGLEY did not grant any new trial.

By reason of the foregoing, Mr. Bolton's unsworn nullity did not contest my Affidavit within the ten day limitation after I filed it on September 11th. My appeal perfected, and exclusive, plenary jurisdiction of the entire case passed to the State appellate court 15 days prior to the October 5th contest hearing.

No party has ever argued, no party has ever cited any authority, and no court has ever ruled that Mr. Bolton's "contest" - prior to Atty. Rodgers' handwritten addendum - was anything more than a nullity.

Similarly, apart from Judge LANGLEY's right to have granted a new trial, no party has ever argued, no party has ever cited any authority, and no court has ever ruled either that I had failed to perfect my appeal on the 10th day, or that Judge LANGLEY had jurisdiction to grant the "contest."

The Texas Appellate Courts' and District Courts' jurisdiction is provided by Article V, Sections 6 and 8 of the Texas Constitution, respectively.

I filed suit in the U.S. District Court under 18 U.S.C. § 1951; 28 U.S.C. §§ 1331, 1343; 28 U.S.C. § 1973c; and 42 U.S.C. §§ 1981, 1982, 1983, 1985(3), and 1986.

The U.S. District Court, with the U.S. Court of Appeals for the Fifth Circuit concurring, decided the ***Rooker-Feldman*** doctrine [4] precludes federal jurisdiction (pages A10 - A13, and A3 - A5, respectively) by:

- Prohibiting collateral attack on a State court decision,
- Prohibiting review of a State court decision, and
- Prohibiting federal jurisdiction where the claims are "inextricably intertwined" in the State court.

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[4] See ***Rooker v. Fidelity Fidelity Trust Co.***, 44 S.Ct. 143 (1923) and ***District of Columbia Court of Appeals v. Feldman***, 103 S.Ct. 1303 (1983)

FILED FEB 3 1994

FILED
At 4:35 o'clock P M
FEB 15 1992
TRAVIS E. NELSON, DIST. CLERK
BRAZOS COUNTY, TEXAS
By Deputy

CAUSE NO. 33,646-85

ARCHIE WARD JULIEN	§	IN THE DISTRICT COURT OF
	§	
vs.	§	BRAZOS COUNTY, TEXAS
	§	
BOYCE B. BOLTON	§	85TH JUDICIAL DISTRICT

OPPOSITION TO AFFIDAVIT OF INABILITY TO PAY APPEAL COSTS

BOYCE B. BOLTON files this statement in opposition to the Affidavit of Inability to Pay Appeal Costs filed by ARCHIE WARD JULIEN and states as follows:

I.

BOLTON is an interested party in this case and is entitled to contest the Affidavit of Inability to Pay Appeal Costs pursuant to Texas Rules of Appellate Procedure 40.

II.

BOLTON generally denies all of the material allegations contained in the "Affidavit of Inability to Pay Appeal Costs" and prays that the Court find that JULIEN is not entitled to prosecute this appeal without posting the appropriate security for costs of the appeal. BOLTON prays for general relief.

Respectfully submitted,

CAPERTON, RODGERS & MILLER, P.C.

W. STEPHEN RODGERS
P.O. BOX 4884
Bryan, TX 77805
(409) 260-9911
(409) 846-7083 (Facsimile)
State Bar No. 17139200

ATTORNEYS FOR DEFENDANTS BOLTON

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing instrument has been mailed certified mail, return receipt requested, to ARCHIE WARD JULIEN, 10530 Newborough, Houston, TX 77099 on this the 15 day of ~~September~~, 1992.

W. STEPHEN RODGERS

Before me the undersigned authority personally appeared W. Stephen Rodgers who ~~upon his oath that~~ stated he is competent in all respects to make this affidavit, and further testified that he has personal knowledge of all matters stated in this contest to the affidavit of Archie Ward Julien which says that Mr. Julien is unable to pay security for the costs of taking an appeal in this case and can state further that all such matters averred to in the contesting document are true and correct.

W. Stephen Rodgers

Notary

BECKY MUECK
MY COMMISSION EXPIRES
MAY 83

REASONS FOR ALLOWING THE WRIT

I.

This petition should be granted by this Court because the decision of the United States Court of Appeals for the Fifth Circuit conflicts with and represents an unwarranted departure from the applicable decisions of this Court.

Lower court conflicts first arise where this Court recognized that it is proper to inquire whether a court had jurisdiction when its decision is brought before another court collaterally or otherwise ***Boswell's Lessee v. Otis***, 50 U.S. 336, 9 How. 336, 13 L.Ed. 164; but where, in the instant case,

- the U.S. District Court altogether avoided inquiring into the issue of whether the State district court had jurisdiction during the "contest" hearing, and instead substituted the fantasy that "RODGERS ... added to Bolton's affidavit" (page A8), and
- the U.S. Fifth Circuit Appellate Court glossed over their own evasion of such inquiry, implementing the deflection that Judge LANGLEY's "... impropriety would not make the judgment void" (page A5).

Thus, the Fifth Circuit completely ignored the essence of this case: that the "impropriety" was Judge LANGLEY's granting the "contest" after

> exclusive, plenary jurisdiction of the entire case had already passed to the State appellate courts at the time of the hearing, irrespective of whether he had jurisdiction at the earlier time of the judgment.

In applying the *Rooker-Feldman* doctrine to prohibit collateral attack on a State court decision made without jurisdiction, the lower courts are further in conflict where this Court has repeatedly promised such decisions may be collaterally attacked everywhere and anywhere ***Williamson v. Berry***, 49 U.S. 495, 8 How. 495, 12 L.Ed. 164; ***Kilbourn v. Thompson***, 103 U.S. 168, 26 L.Ed. 377; and that a sufficient criterion by which a judge is suseptible to liability, is whether or not he acted in a clear absence of jurisdiction. ***Stump v. Sparkman***, 435 U.S. 349, 98 S.Ct. 1099, 55 L.Ed.2d 331 (1978).

In applying *Rooker-Feldman* to prohibit review and "intertwined" claims, the lower courts have implicitly assigned official status to Judge LANGLEY's void contest hearing decision. That is, the lower courts declined to adopt the correct standard that Judge LANGLEY's void granting of the "contest" is a decision without official status, in conflict with such as this Court stated where it defined "judicial" by saying that a court without jurisdiction *coram non judice* - "before a person not a judge" - cannot be engaging in judicial proceedings. ***Burnham v. Superior Court of California***, 110 S.Ct. 2105, 2109 (1990).

The lower courts declined to acknowledge that ***Rooker-Feldman*** prohibitions are premised on the requirement that the State court actually had jurisdiction. So, the lower courts applied ***Rooker-Feldman*** prohibitions where the State court decision granting the "contest" was made in the clear absence of all jurisdiction, in conflict with what this Court observed in ***Rooker*** at 44 S.Ct. 150,

> "A reading of the entire bill shows indubitably that there was full jurisdiction in the state courts ..."

Finally, a similar lower courts' conflict appears where they ignored this Court's forceful emphasis of the corresponding premise in ***Feldman*** at 103 S.Ct. 1311,

> "A crucial question in this case, therefore, is whether the proceedings before the District of Columbia Court of Appeals were judicial ..."

Nowhere do the lower courts muster even a scintilla of bland innuendo - much less any semblance of a ruling - that Judge LANGLEY had jurisdiction at the "contest" hearing. This ommission sets in stark relief the lower courts' numerous above conflicts with this Court.

Clearly, the decision of the United States Court of Appeals for the Fifth Circuit conflicts with and represents an unwarranted departure from the applicable decisions of this Court.

II.

This petition should be granted by this Court because the United States Court of Appeals for the Fifth Circuit has decided an important question of federal law which has not been, but should be, settled by this Court.

This Petition should be granted because this case represents an issue of national importance which will affect the scope of exposure to liability of every trial court judge, host State, and participating lawyer and law firm in our country.

If I may yet rely upon a dated ***Stump v. Sparkman*** annotation, this Court said at 55 L.Ed. 2d 850, 851,

> "Thus far, in the several decisions in which it has determined the question of the immunity of particular judges from civil liability, the Supreme Court has found that under the facts and circumstances presented in those cases, ... judges were immune from civil suits."

The doctrine of judicial immunity exists not solely for the benefit and protection of a judge whose acts may arouse the most intense feelings of the litigants, but for the benefit of the public. ***Pierson v. Ray***, 386 U.S. 547 (1967). How much more should the public be protected from parties who act *coram non judice*?

Thus, it seems that this case presents a question that the lower courts decided incorrectly, but which has never been decided by this Court under facts and circumstances equivalent to those in this case, i.e., where a State court acted without jurisdiction. A case having this importance should be settled by this Court.

III.

The most compelling reason of all that this petition should be granted is because it will address an important national controversy on the constitutional rights of minorities.

It is certainly common public knowledge that the recent dismantling of minority-favored affirmative action, voting districts, school programs, etc., has ignited an explosive firestorm of national proportions.

My Original Complaint describes my diverse ethnicity [5] and such nonCaucasian features as a swarthy complexion and a broad nose with flared nostrils, and all other visible persons as Caucasian. I alleged suffering an onslaught of repeated impermissible discrimination, where

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[5] My ancestors are White, Black, and Red, with each having less than a 50% contribution to my racial makeup. I am, in Louisianan parlance, "Creole."

like plucking grapes from a vine, pieces of my property were plucked from my grasp until the vine was bare.

When I defended against an adverse possession claim with the full support of all applicable law for my defense, I experienced *ad hoc* "new law" created to take my property. When I had the audacity to file a Breach of Warranty of Title claim against the Caucasian seller, I discovered my being so uppity brings not only the courts' blatant disregard for existing law and applicable standards, but a stigmatizing of such a claim as being "frivolous." Thus, subsequent remedial attempts are poisoned with the prejudice of my being a claimant already discredited.

Minorities are unfairly handicapped by a judicial system whose only objective is too often systematic race-based confiscation of property from the minority *du jour*. So intense is this objective, that the State court persisted with this invidious conduct even after losing all jurisdiction.

It is clear I am suffering the continuing legacy of my Black and Red ancestors. They were likewise made to transfer title of their land to eager White hands. Historically, this outrage has occurred either through violence, or, more politely as it is today and in my case, continuing through the present time by hideously contorting facts and laws in bending them to fit thoroughly

corrupt motives. The nature of such courts' decisions end up irrationally related to the laws' original form.

The southern federal courts apparently cannot disagree with my claim that Judge LANGLEY's "contest" hearing was without jurisdiction, and his decision was void. Yet, they withhold relief and join in the mantra that I persist "in bringing frivolous challenges" (all of page A14).

The real question before this Court, then, is whether the social prestige and status, the political elitism, and ultimately, just the skin color of Caucasians are still to be allowed the power to exonerate those who violate and or conspire to violate a minority's Civil Rights.

Thus, this case is unusually important because of its simultaneous occurrence with major Civil Rights revisions. Whatever this Court's response to this case, such response will therefore set national policy to address the hopes, fears, and aspirations related to equal rights and equal opportunities for all in the United States of America.

Respectfully,

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In The

SUPREME COURT OF THE UNITED STATES

October Term, 1994

Archie Ward Julien,
Petitioner,

vs.

The State of Texas,
The Hon. J.D. Langley,
Atty. W. Stephen Rodgers,
Caperton, Rodgers, Miller & Holt, P.C.,
Respondents.

Petition for Writ of Certiorari to The
United States Court of Appeals
for The Fifth Circuit

APPENDIX FOR PETITION FOR WRIT OF CERTIORARI

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(REPRINT OF DENIAL OF APPEAL)

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-20586
Summary Calendar

ARCHIE WARD JULIEN,
Plaintiff-Appellant,

versus

THE STATE OF TEXAS, J.D. LANGLEY, Judge, CAPERTON, RODGERS, MILLER & HOLT, and W. STEPHEN RODGERS,
Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Texas
(CA-H-93-4156)

Before JONES, BARKSDALE, AND BENAVIDES, Circuit Judges.

PER CURIAM:[1]

Archie Ward Julien, *pro se*, appeals the dismissal of his civil rights action against the State of Texas, J.D. Langley, W. Stephen Rodgers and Caperton, Rodgers & Miller. We **AFFIRM.**

I.

Julien alleged in his complaint that, in 1985, he and his wife purchased a lot on which, for business purposes, he planned to build a model steel-frame home; but, an adjacent owner filed an

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[1] Local Rule 47.5.1 provides: "The publication of opinions that have no precedential value and merely decide

adverse possession action against Julien in 1986, claiming part of his lot. After the state trial court ruled in favor of the adjacent owner, Julien lost on appeal, and unsuccessfully sought review by the Texas and United States Supreme Courts. See ***Julien v. Baker***, 758 S.W.2d 873 (Tex. Ct. App. 1988), *cert. denied,* 493 U.S. 955 (1989).

Pursuant to the warranty deed, the seller paid for Julien's defense at the adverse possession trial, but conveyed a portion of another adjacent lot to Julien for appellate legal fees. In 1989, Julien discovered that the second lot was encumbered by a previously undisclosed mortgage. In 1990, Julien filed suit against the seller in state court for breach of warranties of title and deceptive trade practices. The Texas trial court, appellee Judge Langley presiding, ruled against Julien, and awarded the seller approximately $14,000 in attorney's fees. Julien filed an affidavit stating his inability to pay the costs of appeal. The seller's attorney, appellee Rodgers, contested Julien's affidavit. At a hearing, Julien asserted that the contest was ineffective because the Rodgers' document was not sworn; the court agreed with Julien, but allowed Rodgers to correct the deficiency, and overruled Julien's objection that the modified document was untimely filed. Julien attempted unsuccessfully to obtain a writ of mandamus from the Texas appellate courts.

In December 1993, Julien filed the instant action against the State of Texas, Judge Langley, Rodgers, and his law firm, claiming that the defendants had interfered illegally with his steel-frame

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particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that rule, the court has determined that this opinion should not be published.

housing business by conspiring to wrongfully seize his property, and that the defendants had acted individually and conspired together to deny him due process and other constitutional rights, including his right to vote, in depriving him of his property. He prayed for money damages and a "declaration condemning the actions of the Texas courts to curtail their practice of this type of wrongful activity". In a thorough and well-reasoned opinion; the district court granted the defendants' motions to dismiss for lack of subject matter jurisdiction, and sanctioned Julien by enjoining him from filing future actions in the Southern District of Texas until he presents evidence that he has paid a $5,000 sanction imposed by another district judge in connection with the dismissal of a prior federal action in which Julien alleged violations of his constitutional rights arising out of the above-described state court proceedings.

II.

We review *de novo* a dismissal for lack of subject matter jurisdiction. *E.g.*, ***Musslewhite v. State Bar of Texas***, 32 F.3d 942, 945 (5th Cir. 1994). The district court applied the ***Rooker/Feldman*** doctrine, which "directs that federal district courts lack jurisdiction to entertain collateral attacks on state court judgments".[2] ***Liedtke v. State Bar of Texas***, 18 F.3d 315, 317 (5th Cir.), *cert. denied*, ___ U.S. ___, 115 S.Ct. 271 (1994).

Julien's civil rights claims are inextricably intertwined with

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[2] *See* ***Rooker v. Fidelity Trust Co.***, 263 U.S. 413 (1923); ***District of Columbia Court of Appeals v. Feldman***, 460 U.S. 462 (1983).

the state court proceedings, as is evidenced by the following statement in his response to Rodgers' motion to dismiss:

> The case at bar is in more the nature of a review of the state courts' determinations than a trial *de novo* to relitigate the same earlier issues. Nonetheless, to exercise such a review, repetitions of earlier issues are clearly unavoidable.

See ***United States v. Shepard***, 23 F.3d 923, 924 (5th Cir. 1994) (internal quotation marks, footnote, and citations omitted) ("If the district court is confronted with issues that are inextricably intertwined with a state judgment, the court is in essence being called upon to review the state-court decision, and the originality of the district court's jurisdiction precludes such a review.").

Although Julien's complaint couches his claims in terms of violations of his civil rights as the result of the defendants' individual and conspiratorial acts in the state court proceedings, his claims cannot be evaluated without reviewing the propriety of the state court decisions. "It is a well-settled principle that a plaintiff may not seek a reversal in federal court of a state court judgment simply by casting his complaint in the form of a civil rights action." ***Reed v. Terrell***, 759 F.2d 472, 473 (5th Cir.), *cert. denied*, 474 U.S. 946 (1985).

Julien contends that the ***Rooker/Feldman*** doctrine is inapplicable because the state trial court had no jurisdiction to conduct the hearing on the contest to his sworn assertion of inability to pay state appellate court costs because the document, modified and signed by Rodgers, was not an affidavit and was untimely. But, even if the state court acted improperly in

considering that document, such impropriety would not make the judgment void. ***See Liedtke***, 18 F.3d at 317 ("If a state trial court errs the judgment is not void, it is to be reviewed and corrected by the appropriate state appellate court."). As noted, Julien unsuccessfully sought mandamus relief with respect to that ruling.

Because Julien's claims are, in essence, a collateral attack on the state court proceedings, the district court held correctly that it lacked subject-matter jurisdiction pursuant to the ***Rooker-Feldman*** doctrine.

III.

For the foregoing reasons, the judgment is
AFFIRMED.

[Underlined text is cited in the Petition, page 5]

(REPRINT OF MEMORANDUM AND ORDER)

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

Archie Ward Julien,	§	
	§	
Plaintiff,	§	
	§	
v.	§	
	§	
The State of Texas, The Honorable J.D. Langley, Presiding Judge, 85th Texas Judicial District Court, Caperton, Rodgers & Miller, P.C., and W. Stephen Rodgers,	§	Civil Action No. H-93-4156
	§	
Defendants.	§	

MEMORANDUM AND ORDER

Pending before the court are defendants The State of Texas and The Honorable J.D. Langley's Motion to Dismiss (Docket Entry No. 24), defendants Caperton, Rodgers & Miller, P.C. and W. Stephen Rodgers' First Amended Motion to Dismiss and Amended Motion for Imposition of Rule 11 Sanctions (Docket Entry No. 34).

Plaintiff filed this action pursuant to 18 U.S.C. § 1951, 28 U.S.C. §§ 1331, 1343(a)(1), and 1973(c), 42 U.S.C. §§ 1981, 1982, 1983, 1985(3), and 1986 alleging that defendants conspired against him to violate his property rights and voting rights and to interfere with commerce through their alleged actions in a 1990 state court lawsuit.

I. Factual and Procedural History

Plaintiff alleges that in August of 1985 he purchased land from Boyce B. Bolton in College Station, Texas, for the purpose of building and occupying a showcase steel frame house in order to sell other steel frame houses. In August 1986 Ms. Agnes Sobel Baker, owner of an adjacent lot, sued plaintiff in state court and obtained a judgment of adverse possession over part of plaintiff's land because Baker had planted bushes in 1958 on that land based upon her reliance on an inaccurate survey. According to plaintiff the judgment made plaintiff's lot too narrow to build the intended house. During the state court proceeding Bolton paid the costs of trial pursuant to a duty-to-defend-clause in the warranty deed Bolton had conveyed to plaintiff. However, Bolton did not pay plaintiff's appellate costs, but instead made an arrangement with plaintiff by which plaintiff received an additional strip of land. Plaintiff unsuccessfully appealed the trial court's rulings to the Texas Supreme Court and the United States Supreme Court.

On February 21, 1990, plaintiff filed an action in this court against Baker alleging violations of his constitutional rights arising out of the previous state court lawsuit.[1] (Archie Julien v. Agnes S. Baker, Civil Action No. H-90-0636.) On May 15, 1990, the court (per Judge Hoyt) dismissed the action for want of subject matter jurisdiction. After plaintiff filed

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[1] The court takes judicial notice of the 1990 action.

a motion to reconsider the dismissal, the court sanctioned plaintiff $5,000.[2] Plaintiff did not appeal the court's dismissal or order for sanctions against him.

In his complaint in the present action plaintiff alleges that in April 1990 he filed a lawsuit against Bolton in state court for breach of warranty, breach of implied warranty, and violation of the Texas Consumer Credit Act. On August 20, 1992, Judge J.D. Langley dismissed plaintiff's lawsuit because the two-year statute of limitations had run, because plaintiff had waived any claims to the property at issue by settling Bolton's duty to defend, because there was no evidence Bolton was an authorized lender, and because plaintiff's warranty claim was brought in bad faith. Plaintiff then filed an affidavit of inability to pay appeal costs in accordance with the Texas Rules of Appellate Procedure. Bolton contested the affidavit but, according to plaintiff, Bolton did not properly sign the contest. Bolton's attorney, W. Stephen Rodgers, with the approval of Judge Langley, added to Bolton's affidavit by providing a signed statement confirming the contents of the affidavit. Judge Langley then sustained the contest of plaintiff's inability to pay appellate costs. Plaintiff filed a motion for leave to file petition for writ of mandamus arguing that he had already perfected his appeal and therefore that

[Underlined text is cited in the Petition, page 5.]

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[2] The court takes judicial notice that the records of the clerk of the court do not reflect that these sanctions have been paid.

Judge Langley had lost jurisdiction over plaintiff's case before Judge Langley sustained the contest to plaintiff's inability to pay costs on appeal. The Fourteenth Court of Appeals denied leave. Plaintiff then filed a motion to reconsider and motion for general recusal of the Fourteenth Court of Appeals. The Fourteenth Court of Appeals overruled plaintiff's motion to reconsider and plaintiff's motion for general recusal. The Fourteenth Appellate Court and the Supreme Court of Texas denied plaintiff's subsequent petitions for mandamus.

On December 29, 1993, plaintiff filed this action alleging that the actions of Judge Langley, the State of Texas, attorney Rodgers, and Rodgers' law firm in the 1990 state court lawsuit violated numerous constitutional rights of plaintiff. Plaintiff also alleged that the actions and rulings of the various state courts in all of the related state court proceedings were so egregious that they must have been the result of a conspiracy to violate plaintiff's constitutional rights and the result of a violation of his voting rights.

II. Discussion

Defendants have moved to dismiss plaintiff's claims arguing that:

(1) plaintiff fails to state a claim upon which relief can be granted;

(2) the court lacks subject matter jurisdiction over this action because it is a collateral attack on orders rendered in state court proceedings prohibited by the Rooker/Feldman doctrine;

(3) plaintiff cannot establish that the defendant law firm is a state actor;

(4) the statute of limitations has run on plaintiff claims;

(5) plaintiff's claims are barred by res judicata or collateral estoppel;

(6) plaintiff's claims are barred by the judicial proceeding privilege;

(7) the State of Texas is entitled to Eleventh Amendment immunity;

(8) Judge Langley is entitled to judicial immunity on the claims against him; and

(9) Judge Langley is entitled to qualified immunity on the claims against him in his individual capacity.

Because the court must, as a threshold matter, determine whether it has subject matter jurisdiction, the court will first address the defendants' claim that the Rooker/Feldman doctrine precludes the exercise of jurisdiction by this court. Defendants argue that this action is a collateral attack on state court orders in the guise of a constitutional challenge and that the court therefore lacks subject matter jurisdiction pursuant to the Rooker/Feldman doctrine.

> Absent specific law otherwise providing, that doctrine directs that federal district courts lack jurisdiction to entertain collateral attacks on state court judgments. Constitutional questions arising in state court proceedings are to be resolved by the state courts. If a state trial court errs, the judgment is not void, it is to be reviewed and corrected by the appropriate state appellate court. Thereafter, recourse at the federal level is limited

> solely to an application for a writ of certiorari to the United States Supreme Court. The casting of a complaint in the form of a civil rights action cannot circumvent this rule, as
>
> -5-
>
> absent a specific delegation federal district courts, as court[s] of original jurisdiction, lack[ ] appellate jurisdiction to review, modify, or nullify final order[s] of state court[s].

Liedtke v. State Bar of Texas, 18 F.3d 315, 317 (5th Cir. 1994) (holding that plaintiff's § 1983 action regarding his disbarment as a result of a state district court proceeding was precluded by the Rooker/Feldman doctrine). See Rooker v. Fidelity Trust Co., 44 S.Ct. 149 (1923), and District of Columbia Court of Appeals v. Feldman, 103 S.Ct. 1303 (1983).

The court is persuaded that the doctrine applies to this action because plaintiff's claims arise directly out of what plaintiff perceives as a series of unjust rulings by state courts from which he has already sought relief in the Texas Supreme Court. The essence of plaintiff's argument is that a conspiracy must exists to violate his rights because the state courts' rulings have been so egregious. Plaintiff admits that

> The case at bar is in more the nature of a review of the state courts' determinations than a trial de novo to relitigate the same earlier issues. Nonetheless, to exercise such a review, repetitions of earlier issues are clearly unavoidable.

(Plaintiff's Response to Defendant W. Stephen Rodgers' Motion to Dismiss at 11, Docket Entry No. 12) Such a review of state court determinations is precisely what is prohibited by the Rooker/Feldman doctrine because plaintiff's claims are "inextricably intertwined" with state court rulings. See Liedtke, 18 F.3d at 318. See also

Chrissy F. By Medley v. Mississippi Dept. of Public Welfare, 995 F.2d 595, 599 (5th Cir. 1993), cert.

denied, 114 S.Ct. 1336 (1994) (attempt to seek new adjudication of custody issues although couched as a civil rights action was "inextricably intertwined" with state court's custody determination and thus barred by the Rooker/Feldman doctrine); Reed v. Terrell, 759 F.2d 472, 473-474 (5th Cir.), cert. denied, 106 S.Ct. 343 (1985) (attempt to reverse state court's award of attorney's fees asserted as civil rights claim against state court judge, a district clerk, and others was "inextricably intertwined" with the state court's rulings and thus barred by the Rooker/Feldman doctrine); Hagerty v. Succession of Clement, 749 F.2d 217, 220 (5th Cir. 1984), cert. denied, 106 S.Ct. 333 (1985) (attempt to attack the dismissal of a state court lawsuit asserted as a civil rights complaint against state trial judge and others was "inextricably intertwined" with the state court's order dismissing the state court lawsuit and thus barred by the Rooker/Feldman doctrine).

The court is not persuaded by plaintiff's arguments that the Rooker/Feldman doctrine should not apply because Judge Langley's order sustaining the contest to plaintiff's inability to pay appellate costs was void and because plaintiff seeks, in addition to monetary damages, injunctive relief to correct a continuing problem. Plaintiff cannot avoid the reach of the Rooker/Feldman doctrine merely by claiming that the state trial court's order was void because the trial court lacked jurisdiction over his lawsuit. Plaintiff had, and apparently used,

numerous opportunities to raise this argument before the state appellate courts, the proper forum to adjudicate the jurisdiction of the state trial court. See, e.g., Liedtke, 18 F.3d at 317 (declining to adopt the plaintiff's argument that the state court's decision was "void" and therefore excluded from the effect of the Rooker/Feldman doctrine); Chrissy F., 995 F.2d at 599 n.3 (rejecting district court's view that the state court judge violated the plaintiff's "right of access to the courts by conducting a 'hearing' ... over which he lacked jurisdiction ..."); Brinkman v Johnston, 793 F.2d 111, 113 (5th Cir. 1986) ("errors committed by state judges in state courts are for correction in the state court system"). Plaintiff has provided no authority for his argument that the Rooker/Feldman doctrine does not apply because plaintiff seeks injunctive relief, and the Fifth Circuit has applied the Rooker/Feldman doctrine to cases in which a plaintiff sought injunctive relief. See, e.g., Liedtke, 18 F.3d at 316; Chrissy F., 995 F.2d at 597; Reed, 759 F.2d at 473.

Accordingly, the court concludes that it lacks subject matter jurisdiction over this action and defendants' motions to dismiss (Docket Entry Nos. 24 and 34) are **GRANTED**. Because the court concludes that it lacks subject matter jurisdiction over this action, the court need not address defendants' other arguments in support of their motions to dismiss.

III. Order Relating to the Filing of Subsequent Actions by Plaintiff, Archie Ward Julien

The court (per Judge Kenneth Hoyt) has previously ordered plaintiff to pay $5,000.00 to the Clerk of the Court for pursuing a "frivolous" action (arising out of many of the same facts as the instant action) "despite the Court's clear ruling that the Court lack[ed] jurisdiction." (Docket Entry No. 22 in H-90-636) Plaintiff, who is not proceeding in forma pauperis, has neither paid the sanctions nor appealed the order for sanctions. The court's time is valuable,[3] and frivolous actions with voluminous pleadings hinder the court's ability to devote attention to matters that may have merit. Accordingly, because plaintiff persists in bringing frivolous challenges to state court rulings over which the court lacks jurisdiction, the court **ENJOINS** Archie Ward Julien from filing any new action in the Southern District of Texas unless he first presents evidence to the District Clerk that he has paid to the Clerk of the Court the monetary sanctions of $5,000.00 previously ordered by Judge Hoyt. See, e.g., Vinson v. Texas Board of Corrections, 901 F.2d 474, 475 (5th Cir. 1990) (precluding filing of further appeals unless litigant paid prior ordered sanctions); Gelabert v. Lynaugh, 894 F.2d 746, 748 (5th Cir. 1990); Willy v. Coastal

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[3] One study has computed the cost of maintaining a federal district judgeship at $402.00 per hour. Stephen H. Case, Comparison of Approximate Hourly Costs of Legal and Other Professional Service Providers, Federal Bar News & Journal, March/April 1994 at 216.

Corp., 915 F.2d 965, 967 (5th Cir. 1990), aff'd, 112 S.Ct. 1076 (1992) (district court has power "to impose sanctions irrespective of the existence of subject matter jurisdiction").

SIGNED at Houston, Texas, on this 14th day of June, 1994.

(Signed)

SIM LAKE
UNITED STATES DISTRICT JUDGE

(REPRINT OF DENIAL TO REHEAR APPEAL)

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-20586

ARCHIE WARD JULIEN,
Plaintiff-Appellant,

versus

THE STATE OF TEXAS,
THE HON. J.D. LANGLEY,
ATTY. W. STEPHEN RODGERS,
CAPERTON, RODGERS, MILLER & HOLT, P.C.,
Defendants-Appellees.

Appeal from the United States District Court for the
Southern District of Texas

ON PETITION FOR REHEARING AND
SUGGESTION FOR REHEARING EN BANC

Before JONES, BARKSDALE, AND BENAVIDES, Circuit Judges.

PER CURIAM:

The Petition for Rehearing is DENIED and no member of this panel nor Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc, (FRAP and Local Rule 35) the Suggestion for Rehearing En Banc is also DENIED.

ENTERED FOR THE COURT:

(Signed)

United States Circuit Judge

(REPRINT OF DENIAL TO RECONSIDER)

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

Archie Ward Julien,	§	
	§	
Plaintiff,	§	
	§	
v.	§	Civil Action No. H-93-4156
	§	
The State of Texas, et al.,	§	
	§	
Defendants.	§	

ORDER

Plaintiff Archie Ward Julien's Motion for This Honorable Court to Reconsider Its Final Judgment Dismissing This Case (Document Entry No. 40) is DENIED.

SIGNED at Houston, Texas, on this 8th day of July, 1994.

(Signed)

SIM LAKE
UNITED STATES DISTRICT JUDGE

(REPRINT OF FINAL JUDGMENT)

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

Archie Ward Julien,	§	
	§	
Plaintiff,	§	
	§	
v.	§	
	§	
The State of Texas, The Honorable J.D. Langley, Caperton, Rodgers & Miller, P.C., and W. Stephen Rodgers,	§	Civil Action No. H-93-4156
	§	
	§	
	§	
	§	
Defendants.	§	

FINAL JUDGMENT

In accordance with the court's Memorandum and Order, this action is **DISMISSED without prejudice**, and plaintiff, Archie Ward Julien, is **ENJOINED** from filing any new action in the Southern District of Texas unless he first presents evidence to the District Clerk that he has paid to the Clerk of the Court the monetary sanctions of $5,000.00 previously ordered by Judge Hoyt.

This is a **FINAL JUDGMENT.**

SIGNED at Houston, Texas, on this 14th day of June, 1994.

(Signed)

SIM LAKE
UNITED STATES DISTRICT JUDGE

CONSTITUTION, FEDERAL AND STATE STATUTES

Federal Rules and Regulations

18 U.S.C. § 1951 (Racketeer Influenced and Corrupt Organizations) provides:

"(a) Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section shall be fined not more than $10,000 or imprisoned not more than twenty years, or both.

"(b) As used in this section -

"(1) The term 'robbery' means the unlawful taking or obtaining of personal property from the person or in the presence of another against his will, by means of actual or threatened force, or violence, or fear of injury, immediate or future, to his person or property of a relative or member of his family or of anyone in his company at the time of the taking or obtaining.

"(2) The term 'extortion' means the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right.

"(3) The term 'commerce' means commerce within the District of Columbia, or any Territory or Possession of the United States; all commerce between any point in a State, Territory, Possession, or the District of Columbia and any point outside thereof; all commerce between points within the same State through any place outside such State;

and all other commerce over which the United States has jurisdiction.

"(c) This section shall not be construed to repeal, modify or affect section 17 of Title 15, sections 52, 101-115, 151-166 of Title 29 or sections 151-188 of Title 45."

28 U.S.C. § 1254 (Jurisdiction for Certiorari) provides in part:

"Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

"(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;"

28 U.S.C. § 1331 (Jurisdiction for Federal Question) provides:

"The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States."

28 U.S.C. § 1343 (Jurisdiction for Civil Rights) provides in part:

"(a) The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

"(1) To recover damages for injury to his person or property, or because of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in section 1985 of Title 42;

"(2) To recover damages from any person who fails to prevent or to aid in preventing any wrongs mentioned in section 1985 of Title 42 which he had

knowledge were about to occur and power to prevent;

"(3) To redress the deprivation, under color or any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;

"(4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote."

28 U.S.C. § 1973c (Voting rights) provides:

"Whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under the first sentence of section 1973b(b) of this title are in effect shall enact or seek to administer any voting qualifications or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964, or whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under the second sentence of section 1973b(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1968, or whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under the third sentence of section 1973b(b) of this title are in effect shall

enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1972, such State or subdivision may institute an action in the United States District Court for the District of Columbia for a declaratory judgment that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title, and unless and until the court enters such judgment no person shall be denied the right to vote for failure to comply with such qualification, prerequisite, standard, practice, or procedure: *Provided*, That such qualification, prerequisite, standard, practice, or procedure may be enforced without such proceeding if the qualification, prerequisite, standard, practice, or procedure has been submitted by the chief legal officer or another appropriate official of such State or subdivision to the Attorney General and the Attorney General has not interposed an objection within sixty days after such submission, or upon good cause shown, to facilitate an expedited approval within sixty days after such submission, the Attorney General has affirmatively indicated that such objection will not be made. Neither an affirmative indication by the Attorney General that no objection will be made, nor the Attorney General's failure to object, nor a declaratory judgment entered under this section shall bar a subsequent action to enjoin enforcement of such qualification, prerequisite, standard, practice, or procedure. In the event the Attorney General affirmatively indicates that no objection will be made within the sixty-day period following receipt of a submission, the Attorney General may reserve the right to reexamine the submission if additional information comes to his attention during the

remainder of the sixty-day period which would otherwise require objection in accordance with this section. Any action under this section shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of Title 28 and any appeal shall lie to the Supreme Court."

42 U.S.C. § 1981 (Equal rights) provides:

"All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other."

42 U.S.C. § 1982 (Equal property rights) provides:

"All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property.

42 U.S.C. § 1983 (Deprivation under Color of Law) provides:

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

42 U.S.C. § 1985(3) (Conspiracy to violate Civil Rights) provides:

> "If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person of privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the law; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators."

42 U.S.C. § 1986 (Neglect to prevent Civil Rights violation) provides:

> "Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in section 1985 of this title, are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be

committed, shall be liable to the party injured, or his legal representatives, for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented; and such damages may be recovered in an action on the case; and any number of persons guilty of such wrongful neglect or refusal may be joined as defendants in the action; and if the death of any party be caused by any such wrongful act and neglect, the legal representatives of the deceased shall have such action therefor, and may recover not exceeding five thousand dollars damages therein, for the benefit of the widow of the deceased, if there be one, and if there be no widow, then for the benefit of the next of kin of the deceased. But no action under the provisions of this section shall be sustained which is not commenced within one year after the cause of action has accrued."

Texas Rules and Regulations

Rule 40(a)(3), Texas Rules of Appellate Procedure (Perfecting appeal) repeals Article 2266, Vernon's Annotated Civil Statutes and Rule 355, Texas Rules of Civil Procedure, and states:

"(3) *When Party Is Unable to Give Security.*

"(A) When the appellant is unable to pay the cost of appeal or give security therefor, he shall be entitled to prosecute an appeal or writ of error by filing with the clerk, within the period prescribed by Rule 41, his affidavit stating that he is unable to pay the costs of appeal or any part thereof, or to give security therefor.

"(B) The appellant or his attorney shall give notice of the filing of the affidavit to the opposing party or his attorney and to the court reporter of the court where the case was tried within two days

after the filing; otherwise, he shall not be entitled to prosecute the appeal without paying the costs or giving security therefor.

"(C) Any interested officer of the court or party to the suit, may file a contest to the affidavit within ten days after notice thereof, whereupon the court trying the case (if in session) or (if not in session) the judge of the court or county judge of the county in which the case is pending shall set the contest for hearing, and the clerk shall give the parties notice of such setting.

"(D) The burden of proof at the hearing of the contest shall rest upon the appellant to sustain the allegations of the affidavit.

"(E) If no contest is filed in the allotted time, the allegations of the affidavit shall be taken as true. If a contest is filed, the court shall hear the same within ten days after its filing unless the court extends the time for hearing and determining the contest by a signed written order made within the ten day period. The court shall not extend the time for more than twenty additional days after the date of the order of extension. If no ruling is made on the contest within the ten day period or within the period of time as extended by the court, the allegations of the affidavit shall be taken as true.

"(F) If the appellant is able to pay or give security for a part of the costs of appeal, he shall be required to make such payment or give such security (one or both) to the extent of his ability."

Rule 92, Texas Rules of Civil Procedure (General denial) provides in pertinent part:

"A general denial of matters pleaded by the adverse party which are not required to be denied

> under oath, shall be sufficient to put the same in issue. ... ."

Rule 121(c), Texas Rules of Appellate Procedure (Writ of Mandamus) provides in pertinent part:

> "... If the court is of the tentative opinion that relator is entitled to the relief sought, the motion for leave to file will be granted, the petition filed, and the cause placed upon the docket. Otherwise, the motion will be overruled."

Texas Constitution Article V, Section 6 (Appellate court jurisdiction defined) states:

> "The Legislature shall as soon as practicable after the adoption of this amendment divide the State into not less than two nor more than three Supreme Judicial Districts and thereafter into such additional districts as the increase of population and business may require, and shall establish a Court of Civil Appeals in each of said districts, which shall consist of a Chief Justice and two Associate Justices, who shall have the qualifications as herein prescribed for Justices of the Supreme Court. Said Courts of Civil Appeals shall have appellate jurisdiction coextensive with the limits of their respective districts, which shall extend to all civil cases of which the district courts or county courts have original or appellate jurisdiction, under such restrictions and regulations as may be prescribed by law. Provided, that the decisions of said courts shall be conclusive on all questions of fact brought before them on appeal or error.
>
> "Each of said Courts of Civil Appeals shall hold its sessions at a place in its district to be designated by the legislature, and at such time as may be prescribed by law. Said Justices shall be elected by the qualified voters of their respective districts at a general election, for a term of six years and shall

receive for their services the sum of three thousand five hundred dollars per annum until otherwise provided by law. Said courts shall have such other jurisdiction original and appellate as may be prescribed by law. Each Court of Civil Appeals shall appoint a clerk in the same manner as the clerk of the Supreme Court, which clerk shall receive such compensation as may be fixed by law.

"Until the organization of the Courts of Civil Appeals and Criminal Appeals, as herein provided for, the jurisdiction, power and organization and location of the Supreme Court, the Court of Appeals and the Commission of Appeals shall continue as they were before the adoption of this amendment.

"All civil cases which may be pending in the Court of Appeals shall as soon as practicable after the organization of the Courts of Civil Appeals be certified to, and the records thereof be transmitted to the proper Courts of Civil Appeals to be decided by said Courts. At the first session of the Supreme Court the Court of Criminal Appeals and such of the Courts of Civil Appeals which may be hereafter created under this Article after the first election of the judges of such Courts under this amendment, the terms of office of the judges of each Court shall be divided into three classes and the Justices thereof shall draw for the different classes. Those who shall draw class No. 1 shall hold their offices two years, those drawing class No. 2 shall hold their offices for four years, and those who may draw class No. 3 shall hold their offices for six years, from the date of their election and until their successors are elected and qualified, and thereafter each of the said judges shall hold his office for six years, as provided in this Constitution. (Declared adopted September 22, 1891.)"

Texas Constitution Article V, Section 8 (District court jurisdiction defined) states:

> "The district court shall have original jurisdiction in all criminal cases of the grade of felony; in all suits in behalf of the State to recover penalties, forfeitures and escheats; of all cases of divorce; of all misdemeanors involving official misconduct; of all suits to recover damages for slander or defamation of character; of all suits for trial of title to land and for the enforcement of liens thereon; of all suits for the trial of right of property levied upon by virtue of any writ of execution, sequestrian or attachment when the property levied on shall be equal to or exceed in value five hundred dollars; of all suits, complaints or pleas whatever, without regard to any distinction between law and equity, when the matter in controversy shall be valued at or amount to five hundred dollars exclusive of interest; of contested elections, and said court and the judges thereof, shall have power to issue writs of habeas corpus, mandamus, injunction and certiorari and all writs necessary to enforce their jurisdiction. The district court shall have appellate jurisdiction and general control in probate matters, over the county court established in each county, for appointing guardians, granting letters testamentary and of administration, probating wills, for settling the accounts of executors, administrators and guardians, and for the transaction of all business appertaining to estates; and original jurisdiction and general control over executors, administrators, guardians and minors under such regulations as may be prescribed by law. The district court shall have appellate jurisdiction and general supervisory control over the county commissioners' court with such exceptions and under such regulations as may be prescribed by law; and shall have general original jurisdiction over all causes of action whatever for which a remedy or jurisdiction is not provided by

> law or this Constitution, and such other jurisdiction, original and appellate, as may be provided by law. (Declared adopted September 22, 1891.)

Vernon's Texas Annotated Statutes, article 23(18), General Provisions (Affidavit defined) states:

> "'Affidavit' means a statement in writing of a fact or facts signed by the party making it, and sworn to before some officer authorized to administer oaths, and officially certified to by such officer under his seal of office."

Vernon's Texas Annotated Statutes, Title 2 § 17.42, Business and Commerce, [*Deceptive Trade Practices Consumer Protection Act* (DTPCPA)] provides:

> "Any waiver by a consumer of the provisions of this subchapter is contrary to public policy and is unenforceable and void; provided, however, that a business consumer with assets of $5 million or more ... may by written contract waive the provisions of this subchapter, other than Section 17.555."